IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

DATE OF DECISION: 24.9.2007

Sukhvinder Singh **...Petitioner**

VERSUS

Baljeet Kaur and others **...Respondents**

CORAM

HON'BLE MR.JUSTICE PERMOD KOHLI

PRESENT: Mr.B.S.Bhalla, Advocate for the petitioner

Permod Kohli,J. (Oral)

This Civil Revision is directed against the order dated 31.5.2007 passed by the Commissioner, Workmen's Compensation (Assistant Labour Commissioner), Sangrur (hereinafter referred to " Commissioner") rejecting an application dated 8.5.2006 for setting aside ex-parte order dated 30.3.2005. On the application of the respondents before the Commissioner, an award came to be passed in favour of the respondents awarding compensation on account of death of the workman, namely, Iqbal Singh alais Ghudi who was working as a driver with the petitioner and claimed to have died during the course of employment. The Commissioner proceeded ex-parte vide order dated 25.2.2005 against the present petitioner on the basis of endorsement of refusal on two registered notices issued to the petitioner herein. The petitioner was respondent no.2 before the

Commissioner. The petitioner/respondent no.2 was proceeded ex-parte, though respondent no.1 appeared and contested the claim. On the basis of material on record, the Commissioner passed its award on 30.3.2005. The present petitioner against whom the ex-parte award was passed, filed an application dated 8.5.2006 for setting aside the same. It is this application which has been rejected by the Commissioner vide the impugned order dated 31.5.2007. The claim of the petitioner before the Commissioner was that he was never served with the notice. This plea, however, has not been accepted by the Commissioner, in view of the two reports of the postal agencies making endorsement of "refusal". A bare statement in the application for setting aside the ex-parte order is not sufficient to rebut the statutory presumption in favour of the endorsement of "refusal". The Commissioner observed that the applicant had been intentionally avoiding service and has deliberately refused to accept the summons and consequently dismissed the application vide the impugned order.

I have heard learned counsel for the petitioner. I do not find any infirmity in the impugned order. There is not only one, but two endorsements of refusal. Neither any evidence has been led nor any attempt has been made to rebut the statutory presumption. The award is also sought to be contested on merits. If the petitioner is aggrieved of the award on merit, his remedy is to prefer an appeal. However, he cannot be permitted to avoid the Appellate Forum and invoke jurisdiction of this Court under

Article 227 of the Constitution of India. If the petitioner challenges the award, he is required to deposit the awarded amount for preferring an appeal. This Revision is an attempt to avoid the deposit of the awarded amount. No interference is warranted.

In view of the above, I find no merit in this Revision Petition which is accordingly dismissed.

24.9.2007 **(PERMOD KOHLI)**
MFK **JUDGE**